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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DAWIT TEFFERA, Plaintiff and Appellant, v. FRANK MORYL, Defendant and Respondent.	H026390 (Santa Clara County Super. Ct. No. CV803464)

Plaintiff Dawit Teffera sued defendant Frank Moryl for injuries arising out of an automobile accident on Highway 101 in San Jose. A jury awarded him damages, but the amount was less than he had been awarded after judicial arbitration. Consequently, he was required to pay defendant's costs under Code of Civil Procedure section 1141.21. On appeal, plaintiff challenges the trial court's evidentiary rulings, the jury's verdict, the denial of his motion for a new trial, and the award of costs to defendant. We find no merit in these contentions and must therefore affirm the judgment.

Background

Plaintiff initiated this action against defendant for personal injury and property damage. The court referred the matter to judicial arbitration, which resulted in an award of $32,139 to plaintiff. Plaintiff was dissatisfied with this award, however, and the matter proceeded to jury trial, where the key issue was the source of an injury to his right shoulder.

Both parties testified at trial, and the deposition testimony of a third driver, Jeffrey VanStone, was read into the record. VanStone testified that on January 9, 2001 he was driving a van and towing a trailer northbound on Highway 101. He was traveling between 55 and 60 miles per hour in the right lane. There was no traffic ahead of him for at least a mile, but behind him was a group of about five cars in the two northbound lanes. Plaintiff was driving the front car in the left lane, about two or three car lengths behind VanStone. The group of cars, which were traveling faster than VanStone, approached to about 50 feet behind him and stayed there for 20 seconds to a minute, having slowed to about 60 miles per hour. At one point, plaintiff's car was only about five feet behind VanStone's trailer. Defendant, who was driving directly behind VanStone in the right lane, tried to move into the left lane in front of plaintiff by passing through the "very small gap" between the trailer and plaintiff's car. His car collided with VanStone's trailer.

Plaintiff testified that the accident occurred around 5 p.m. He was driving about 60 to 65 miles per hour a couple of miles before the collision; he did not recall dropping his speed or seeing any lights flash behind him as he approached VanStone's vehicle, but he had not been paying attention to anything in back of him. He did not remember seeing defendant's car until it was beside his own car, about a "split second" before defendant attempted to move into the left lane. Defendant's car moved "sharply" into the left lane and "clipped" the right front end of plaintiff's car.

Later that night plaintiff noticed that his right wrist and shoulder hurt. By the time of trial his shoulder still caused discomfort whenever he moved his arm away from his body, carried things, or slept on his right side. By the time of trial he was intending to have surgery.

As a child plaintiff had undergone several operations for polio, which had left his right leg shorter than his left and caused him to walk with an uneven gait. Plaintiff normally used his arms to help himself rise from a sitting position.

After the accident plaintiff was treated alternately by Dr. Daniel Haber and Dr. Ronald N. Chaplan. Dr. Haber diagnosed a rotator cuff injury. Surgery, he said, while elective, was "a good option" for plaintiff, as he was "unwilling to live with" his condition. Dr. Haber believed it likely that the accident caused the rotator-cuff injury because there had been no right shoulder pain beforehand. He acknowledged, however, that absence of pain before the accident did not necessarily mean the accident caused the injury; instead, the sudden jolt could have created swelling or inflammation of an earlier injury that had not been painful until then. He also agreed that plaintiff's shoulder could have degenerated as a result of plaintiff's having to lift himself out of a chair. He would not be surprised, he said, if plaintiff had a preexisting shoulder injury; that was a "50/50" probability.

Between May and August 2001 plaintiff's symptoms worsened with the increase in his activities. At that time he saw Dr. Chaplan, whose deposition testimony was read to the jury. Dr. Chaplan also diagnosed a partial tear of the rotator cuff, along with tendinitis and a possible tear of the superior labrum (a "SLAP lesion"). Dr. Chaplan had no opinion regarding the cause of these injuries; there was "no way to tell" whether they resulted from a specific traumatic event such as the car accident or from progressive degeneration caused by conditions such as repetitive stress. Dr. Chaplan agreed that surgery was recommended, but this was a decision for the patient to make; these were "very elective operations."

Dr. Leroi Gardner also examined plaintiff and reviewed his records. Dr. Gardner expressed the opinion that it was "medically reasonably probable" that the accident caused plaintiff's injury, whether the "injury" was considered a tear or only inflammation of a prior condition. His opinion was based on the fact that plaintiff had not been suffering pain before the accident and on plaintiff's description of how the steering wheel jerked out of his hands during the accident. Dr. Gardner believed that plaintiff had suffered deterioration of his rotator cuff before the accident from using his arms to lift

himself. The accident accelerated the deterioration. Dr. Gardner agreed that plaintiff had a partially frozen shoulder, which could have been avoided if plaintiff had obtained early physical therapy. He would not have recommended surgery as of May 2001, or even by October 2001, because more conservative treatments had not been fully explored.

Dr. Norman Sokoloff testified as an expert for the defense. He could not attribute plaintiff's symptoms to the accident because plaintiff's recollection of the "mechanism" of the injury was too vague. Dr. Sokoloff also explained that an acute rotator-cuff tear or SLAP lesion would have caused immediate severe pain, not delayed symptoms, and he questioned the diagnosis of tendinitis. Dr. Sokoloff stated that the majority of patients who have had "lower extremity polio" have gone on to suffer shoulder weakness and pain. Symptoms of bursitis, tendinitis, and rotator-cuff wear and tear occur in the normal population by the late 40s or early 50s, but in those who repeatedly load the shoulders by weight lifting or just getting up, "that adds significant wear and tear and stress." Dr. Sokoloff thus found no medical probability that plaintiff's injuries were caused by the accident, and it would have been "pure speculation" to assign a percentage corresponding to any increase in the pre-existing condition caused by this accident.

Defendant gave his account of the accident. He stated that he had been driving behind plaintiff about half a mile behind VanStone. Plaintiff had been driving slowly for six or seven miles, and several times defendant had flashed his headlights so that plaintiff would move to the right lane. Other cars had been passing plaintiff, who was driving at 55 miles per hour, as was VanStone. When he saw that plaintiff was two to three car lengths behind VanStone, defendant thought he had enough room to pass plaintiff on the right, so he moved in behind VanStone about half a car length behind the trailer. As he attempted to move back into the left lane, however, "there was closure in the space," and he hit plaintiff's car and VanStone's trailer.

Some days after the accident plaintiff telephoned defendant and said that he did not want defendant to lose his home. The trial court later questioned plaintiff's motive in making this statement.

The jury found both parties to have been negligent. Defendant was 70 percent at fault, while plaintiff was 30 percent at fault. Accordingly, plaintiff received 70 percent of the $2,500 in damages he was found to have suffered,[1] for a total award of $1,750.

Because plaintiff received less than he had been awarded by the arbitrator, he was subject to the penalty provisions of Code of Civil Procedure section 1141.21, under which he could be ordered to pay defendant's costs. Plaintiff moved for relief from this burden on the ground of "substantial economic hardship as not to be in the interest of justice." Plaintiff also moved for a new trial and for an order taxing costs. The court granted in part the motion to tax costs but denied the remaining requests. After deducting plaintiff's damages of $1,750, the court awarded defendant $20,228.80 in costs.

Discussion

1. Standards of Review

Our review of this case is impeded by plaintiff's presentation of the facts, the issues, and the law. His carelessly written and poorly edited brief relates a one-sided version of the facts, refers to a defense witness as "infamous," distorts the applicable standards of review, and misstates the law. On those issues relating to the sufficiency of the evidence, the governing principles require us to determine only "whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (*Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.) "Substantial

[1] All of this amount consisted of economic damages; the jury found that plaintiff had not incurred any non-economic damages.

evidence is evidence of ponderable legal significance, reasonable, credible and of solid value. [Citation.]" (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1100.) This standard particularly applies to plaintiff's assertion that the evidence does not support the jury's finding that the accident caused him to suffer only $2,500 in damages. (See, e.g., *Sparks v. Owens-Illinois, Inc.* (1995) 32 Cal.App.4th 461, 476 [substantial evidence standard applies to findings of cause and allocation of fault]; *Hardison v. Bushnell* (1993) 18 Cal.App.4th 22, 26 [appellate court must determine whether substantial evidence supported jury finding that defendant's negligent driving did not cause plaintiff's injuries].)

As to plaintiff's assertions of error in admitting and excluding evidence and in denying his motion for a new trial, plaintiff first observes correctly that our review is governed by the abuse-of-discretion standard. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1078.) Yet he then states that there are no "set or objective guidelines defining abuse of discretion" and suggests that any discretionary ruling should therefore be reviewed "as a question of law, subject to plenary appellate scrutiny." We decline his invitation to ignore long-settled principles of review. Instead, we will examine the trial court's rulings on the admissibility of evidence and on plaintiff's new-trial motion solely to determine whether there has been a clear abuse of the broad discretion afforded the trial court. "[I]t is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.] We have said that when two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court." (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.)

Finally, a question of whether a jury instruction correctly states the law is resolved under the independent or de novo standard of review. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) Nevertheless, we may not reverse for instructional error unless it has resulted

in prejudice and a miscarriage of justice. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; see also *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1054; *Soule v. General Motors Corp*. (1994) 8 Cal.4th 548, 570-571.) A miscarriage of justice should be declared only if it is reasonably probable that but for the error, the appellant would have obtained a more favorable result. (*Pool v. City of Oakland, supra,* 42 Cal.3d at p. 1051; *O'Hearn v. Hillcrest Gym and Fitness Center, Inc.* (2004) 115 Cal.App.4th 491, 500.)

2. Admission of Prior Injuries and Claims

At trial the jury heard evidence that plaintiff had previously suffered an injury to the left shoulder in 1999, when someone ran a red light and clipped the front end of his car. The pain from that injury sometimes caused him to place more weight on his right arm to help himself out of a chair. According to his testimony, plaintiff had obtained physical therapy but was unable to afford surgery for this injury. The injury subsided within two years, and he received an insurance settlement of $10,000-$15,000 for his medical expenses. In May of 2002, about a year before trial, plaintiff was involved in another freeway auto accident, from which he suffered back and pelvic pain. He again received physical therapy for those injuries, and he had a claim pending for personal injury and property damage. In August 2002 a car rear-ended his car, causing him to hit the car in front of him. The first driver fled, leaving him with damage to his car but no bodily injury.

Plaintiff challenges the admission of testimony about these three other car accidents. He also asserts error in the admission of a disability discrimination lawsuit he had filed, which was ultimately settled by the Equal Employment Opportunity Commission (EEOC) for $35,000-$40,000. Plaintiff vaguely contends that this was all improper character evidence which was more prejudicial than probative, and he insists that the jury must have considered the evidence for the wrong reasons.

As defendant points out, however, plaintiff did not establish a foundation for overturning the trial court's evidentiary ruling. The only objections to the testimony as it

was presented were directed at the *amounts* received for his claims, not at the events themselves. Only later, outside the presence of the jury, did plaintiff object that evidence of prior bad acts was improper in civil actions and irrelevant in this case. He asked the court to instruct the jury to disregard the evidence or alternatively grant a mistrial. The trial court itself noted that these were new reasons for his objection, and it stated that it would have considered authority for sustaining the objection if plaintiff had offered it earlier. Nevertheless, it considered the new objection on the merits, finding the accident evidence relevant and more probative than prejudicial under Evidence Code section 352. The court also regarded the evidence as important to impeach plaintiff's claim that he could not pay his medical bills, but it expressly stated that it was not admitting the evidence to show "a propensity to commit certain acts to enrich himself by insurance schemes or anything of that sort." Subsequently, the court denied plaintiff's mistrial motion but instructed the jury not to consider the EEOC settlement.

Evidence Code section 353 states that "[a] verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: . . . [t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion." This provision also requires a showing that the erroneous admission of the evidence resulted in a miscarriage of justice. (Evid. Code, § 353, subd. (b).) Here plaintiff did not make a timely motion to exclude the testimony that he had been in three other car accidents or the fact that he had filed a discrimination claim. As the trial court pointed out, it was this failure to object that allowed the jury to hear the assertedly improper evidence. (Cf. *Platzer v. Mammoth Mountain Ski Area* (2002) 104 Cal.App.4th 1253, 1260 [party must object at the time exclusion is sought, specifying grounds].)

Even if the mistrial motion was sufficient to present an adequate objection and request to strike, the court's rulings were well within its discretion. The focus of

plaintiff's argument is the asserted use of the evidence to portray him as a "con artist, routinely and purposely getting into auto accidents and making false claims." But the court did not admit the evidence on this ground, but instead found it relevant to the credibility of plaintiff's claim that he had insufficient money to obtain treatment for his current injuries.

In any event, plaintiff fails to show prejudice. As to the EEOC claim, the court specifically instructed the jury not to consider this matter for any purpose, but to disregard it altogether. The court also elicited personal assurances from all the jurors that they would not consider "for any purpose whatsoever" any of the evidence related to the EEOC settlement. The court was "more than satisfied" by the jurors' response. Subsequently, the court reminded the jury, in accordance with BAJI 2.05, that evidence admitted for a limited purpose must not be considered for any other purpose.

Nothing in the record indicates that the jury failed to follow these admonitions. To the extent that the instructions were inadequate as to the accident evidence, it was incumbent on plaintiff to request amplification or clarification.[2] On the contrary, notwithstanding the parties' stipulation that the instructions to be given were sufficient absent an objection on the record, plaintiff did not object or request any explanation of the use to which the jury could consider the other car accidents. Indeed, he stipulated that he was agreeing to the instructions the court intended to give except for those to which he specifically objected on the record. As to plaintiff's assertion that the EEOC instruction was "too little and too late – it could not unring the bell," the claimed error would not

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[2] In denying plaintiff's motion for a new trial, the court noted that it had offered to read an additional pinpoint instruction, but plaintiff's counsel had asked the court not to read it, finding the given instruction adequate. A notation on BAJI 2.05, among the written instructions given to the jury, states that plaintiff was "not requesting" the following addition to the instruction: "e.g. other acci[dent] ($15,000): not to show propensity; only credibility; not indigent."

have occurred had plaintiff sought exclusion before the jury heard the evidence. In light of these circumstances we conclude that the admission of the challenged testimony did not result in any significant prejudice to plaintiff and certainly did not produce a miscarriage of justice.

Plaintiff similarly contends that the trial court improperly admitted the fact that he had obtained insurance proceeds from settling the prior accident cases with the other party's insurance carrier. The settlement, together with the events themselves, cast plaintiff "as a vulture, going after the insurance proceeds." Again, however, plaintiff did not object to this evidence; his objection was only to the amount of the settlement. Moreover, plaintiff makes no showing beyond a conclusory assertion that this evidence "exacerbated the prejudice caused by the admission of other auto accident case evidence." No error or prejudice is apparent on this record.

3. Exclusion of Job Opportunities

During trial plaintiff testified that he had received two offers of government employment conditioned on completing his degree in international policy studies, passing a physical examination, and obtaining security clearance. Both jobs involved research and analysis, but he did not know what the physical demands would be. He had been told not to name the offering agencies, he said, for "security purposes." He had no contact information for the people with whom he had interviewed.

Defense counsel asked the court to instruct plaintiff to name the prospective employers or alternatively to strike plaintiff's wage loss claim. Plaintiff's attorney represented that he intended to call a career placement officer at plaintiff's school, who had already testified by deposition that graduates of the school were placed in jobs with average salaries of $48,000 to $52,000 a year. Thus, he argued, plaintiff would be able to establish wage loss without naming the offering agency. The court deferred a ruling on the wage loss claim and gave plaintiff one more chance to name the potential employer.

Plaintiff refused to answer, since it would "jeopardize [his] employment opportunity," so the court instructed the jury to disregard the testimony regarding the job offers.

On appeal, plaintiff contends that the striking of his testimony was "tantamount to instructing the jury that [he] had fabricated the job offer to increase damages." In plaintiff's view, the ruling made him appear to be a liar and, in combination with the evidence of the other acts, "crippled" his credibility. Plaintiff thus proceeds directly to an assertion of prejudice without examining whether the ruling was erroneous under any Evidence Code provision or any judicially created rules of exclusion.

We find no error, however. The court reasonably determined that the wage-loss claim depended on solid, credible evidence that plaintiff had a job offer. The court appeared to agree with defense counsel that cross-examination of plaintiff regarding the asserted offer would be significantly impaired without an identification of the employer. Plaintiff's testimony, the court remarked, was hearsay, and the existence of the offer itself was "pure speculation."[3] The court nonetheless declined to strike the entire wage-loss claim. Whether the career placement officer's testimony might also be speculative was an issue the court reserved for the time plaintiff might offer her as a witness.[4] Because the

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[3] Subsequently plaintiff withdrew his wage-loss claim except for losses during the time he would be undergoing and recovering from surgery. A notation in the written jury instructions indicates that a request for BAJI No. 14.13, which describes earning capacity and lost work time as economic damages, was withdrawn. The court did, however, define "economic damages" to include loss of employment opportunities and loss of earnings, and, more specifically, the "present cash value of earning capacity reasonably certain to be lost in the future as a result of injury in question."

[4] The court did subsequently admit the deposition testimony of Leah Gowron, the Director of Career Development for the Graduate School of International Policy Studies at the Monterey Institute of International Studies, where plaintiff was a student. Gowron stated that students like plaintiff, who obtained a master's degree and were hired by the federal government with limited experience, could expect to start their employment with a salary of $38,000 to $39,000, or up to about $43,000 with more experience or linguistic ability.

court's ruling did not exceed the bounds of reason, we find no abuse of discretion in the striking of plaintiff's testimony.

4. Instruction on "Prima Facie Evidence" of Negligence

The trial court instructed the jury in the language of Vehicle Code section 21754, subdivision (e),[5] which describes the circumstances under which a driver may pass on the right,[6] and section 21654, subdivision (a), which requires slower vehicles to be driven in the right lane or as close as possible to the right-hand edge of the road.[7] In accordance with subdivision (b) of section 21654, the court specifically told the jury that "[i]f a vehicle is being driven at a speed less than the normal speed of traffic moving in the same direction at such time, and is not being driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb, it shall constitute *prima facie evidence* that the driver is operating the vehicle in violation of subdivision (a) of this section." (§ 21654, subd. (b), emphasis added.)

Plaintiff had offered the following additional instruction to explain the term "prima facie evidence" with respect to section 21654: "Prima facie evidence of a violation of this section, Vehicle Code §21654, is a presumption of negligence, but this

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[5] All statutory references in this section are to the Vehicle Code.

[6] The court informed the jury that this section allowed a driver to overtake and pass on the right "only under the following circumstance: That is, upon a highway divided into two roadways where such traffic is restricted in one direction upon each of such roadways. This provision or the provisions of this section shall not relieve the driver of a slow-moving vehicle from the duty to drive as closely as practicable to the right-hand edge of the roadway."

[7] Vehicle Code section 21654, subdivision (a), provides that "any vehicle proceeding upon a highway at a speed less than the normal speed of traffic moving in the same direction at such time shall be driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway."

does not mean that violation of this Vehicle Code section automatically constitutes negligence. You must consider all of the circumstances surrounding the collision including the speed of the drivers, the traffic conditions, the . . . speed limit,[8] and other surrounding circumstances in determining whether anyone can be considered to be a slow-moving driver and, if there was a slow-moving driver, whether he was driving as close to the right-hand edge of the roadway as practicable in the circumstances."[9]

The trial court modified this proposed instruction to refer to violations of *both* sections 21654 and 21754. It also struck the cautionary language regarding the circumstances facing an alleged "slow-moving driver." The resulting explanation stated: "Prima facie evidence of a violation of either of these sections, that is, Vehicle Code [s]ection 21654 or 21754(e), is a presumption of negligence, but this does not mean [that] violation of these [V]ehicle [C]ode sections automatically constitutes negligence. You must consider all of [the] circumstances of this case in determining . . . negligence."

Before reading these instructions, the court recited for the record the parties' agreement that all instructions not discussed on the record had been "stipulated to and requested by both sides, and there are no instructions that have been requested that the Court did not give." Plaintiff's counsel objected to the court's striking of the language he had proposed.

Plaintiff contends on appeal that the term "prima facie" should not have been used in the instructions because it "was not explained to the jury and no doubt confused some jurors." His argument is completely without merit. The record could not be clearer that plaintiff stipulated to the instructions given except as contested on the record. Contrary

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[8] As originally proposed, the instruction would have included the words "prima facie speed limit." At the hearing on proposed jury instructions, however, plaintiff's counsel asked that the words "prima facie" be omitted in this phrase.

[9] Plaintiff had also requested deletion of the language that begins section 21654, i.e., "Notwithstanding the prima facie speed limits . . ." The court acceded to this request.

to plaintiff's representation on appeal, he did *not* object to the use of the term "prima facie." Indeed, he was the one who proposed an explanation of the term as used in section 21654. Having contributed to the jury's hearing and understanding of the term, plaintiff may not now complain of juror confusion.

5. Denial of a New Trial

Plaintiff next asserts an abuse of discretion in the trial court's denial of his motion for a new trial. This contention, however, is predicated on his claim of "cumulative error" with respect to the jury instructions and the admission of evidence, which we have already rejected. As no error has been shown, either individually or collectively, we can only conclude that the trial court properly exercised its discretion in denying plaintiff's motion for a new trial.

6. Sufficiency of the Evidence

Plaintiff next contends that substantial evidence does not support the jury's finding that defendant's damages were only $2,500. According to plaintiff, "the jury rejected the expert opinion of Dr. Sokoloff and considered the opinions of Drs. Chaplan, Gardner and Haber. Thus, the uncontradicted evidence relied on does not support the verdict. It is clear that the jury was so tainted by the other[-]act evidence that it refused to follow the court's instructions as to aggravated preexisting conditions."

Plaintiff's argument is without factual, legal, or logical support. The substance of his argument, which is quoted above, reveals that his focus is not the sufficiency of the evidence of causation, but the admission of the three other auto accidents and the EEOC claim. We have already rejected that challenge. Plaintiff offers no other legal or factual basis for overturning the verdict. The testimony of Drs. Chaplan, Gardner and Haber did not unequivocally and uniformly contribute to plaintiff's theory that the accident was responsible for his rotator cuff injury, nor did it support his request for $65,000 in damages. On the contrary, Dr. Chaplan alone was unable to offer an opinion as to causation; there was "no way to tell" whether any of the described injuries resulted from

sudden trauma or degeneration over time. Dr. Haber, who also treated plaintiff, said he would not have been surprised to discover "some involvement" of plaintiff's shoulder before the accident; there was a 50-percent probability of such preexisting injury. Nor can we ignore the testimony of Dr. Sokoloff, who assigned no medical probability to the accident as the cause.[10] The jury could have concluded from all the evidence presented that plaintiff's shoulder injury was primarily the result of chronic stress rather than acute trauma, and that the contribution of the accident to his medical needs was minimal. Having reviewed the entire record in the light most favorable to the verdict, we find substantial evidence to support the jury's finding that the accident caused plaintiff to suffer $2,500 in damages.

7. Award of Costs

As noted earlier, plaintiff rejected a judicial arbitration decision awarding him $32,139. Under Code of Civil Procedure section 1141.21 (hereafter section 1141.21), if a party who has rejected a judicial arbitration award fails to obtain a more favorable judgment after a trial de novo, he or she must be ordered to pay certain litigation costs incurred thereafter by the other party, including expert witness fees.[11] The court may

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[10] The jurors' affidavits, which indicate that many of the jurors took a strong dislike to Dr. Sokoloff, are not relevant to our review of the evidence supporting the jury's factual conclusions. (See *Crabtree v. Western Pac. R. Co.* (1939) 33 Cal.App.2d 35, 47-48; *Markaway v. Keesling* (1963) 211 Cal.App.2d 607, 610-611.)

[11] Code of Civil Procedure section 1141.21 provides, in pertinent part: "(a) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice: . . . [¶] (ii) To the other party or parties, all costs specified in Section 1033.5, and the party electing the trial de novo shall not recover his or her costs. [¶] (iii) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case."

relieve the party from this requirement if it expressly finds that the order would impose on that party "such a substantial economic hardship as not to be in the interest of justice." (§ 1141.21, subd. (a).)

This provision reflects the Legislature's intent to promote alternatives to costly and time-consuming trials by penalizing parties who insist on a trial after obtaining a judicial arbitration award. "Discouraging trial de novo is essential to the proper functioning of the judicial arbitration system. Along with its goal of resolving small claims efficiently and affordably, judicial arbitration is intended to ease court case loads. . . . The success of judicial arbitration in achieving these goals is dependent on a small incidence of trial de novo election." (*Flynn v. Gorton* (1989) 207 Cal.App.3d 1550, 1555; accord, *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 319, disapproved on another point in *Phelps v. Stostad* (1997) 16 Cal.4th 23, 34.)

After trial plaintiff moved for relief from the imposition of costs and fees, claiming substantial economic hardship. Plaintiff pointed to his testimony that there were medical liens against him which he was unable to pay, and that he had delayed surgery because he could not afford it. Defendant opposed the motion. Noting that plaintiff had also moved for a new trial, defendant argued that "the obvious intent" of the motion for relief was to avoid the penalty of section 1141.21 for all future trials even though it was unlikely that plaintiff would ever beat the arbitration award. The trial court found, based on plaintiff's testimony regarding the conditional job offer and the deposition testimony of the career placement director, that there was "ample evidence" that plaintiff had a reasonable prospect of employment. The court expressly determined that "even if the imposition of costs and fees would create an economic hardship, it would not be in the interests of justice to grant plaintiff's motion for relief." The court recalled that plaintiff had demanded $85,000 and offered to settle for no less than $60,000, demands that were "not reasonable." The court also cited the lack of candor in plaintiff's testimony.

Plaintiff contends that this is a "classic case" of abuse of discretion, because the costs imposed an economic hardship on him and the court engaged in flawed reasoning in its ruling on the interests of justice. We disagree. The court has only limited discretion to exempt a party from the mandate of section 1141.21. (*Bhullar v. Tayyab* (1996) 46 Cal.App.4th 582, 588-590.) Here the court's comments at the hearing reflect its finding that plaintiff was not indigent, as he claimed; plaintiff had received a conditional job offer, the court noted, and the career placement director had testified that graduates of the school had reasonable prospects for employment.[12] The court's additional conclusion that relief would not be in the interests of justice was based on the unreasonableness and intransigence of plaintiff's settlement position. These were assessments the court was permitted to make. It was further entitled to deny the motion based on plaintiff's lack of credibility and his threat to defendant that "he might be getting his house."

There was also no legal impediment in this proceeding to the use of evidence that had been excluded from the jury's consideration. Plaintiff's testimony that he had been conditionally offered a government job was struck because plaintiff refused to disclose the name of the agency, thereby precluding effective cross-examination regarding his job prospects. That ruling did not make plaintiff's testimony untrue or inadmissible for all purposes. Indeed, when asked if there was any objection to the court's consideration of this evidence, plaintiff's counsel acknowledged that the court had discretion and only suggested that the testimony was speculative. The court then recalled that plaintiff's counsel had argued during trial -- and convinced the court -- that the evidence was not speculative. Together with the testimony of the career placement director, plaintiff's own

[12] Plaintiff misstates the record when he asserts that "[t]he court was aware [that he] was indigent at the time of trial"; the cited page of the trial transcript discloses only plaintiff's belief that he was indigent based on his understanding of the term.

claim that he had received two job offers was properly used as a factual basis for the court's conclusion that plaintiff would be able to pay defendant's costs.

Finally, we reject plaintiff's request that we strike the expert witness fees for Dr. Sokoloff's trial testimony on the ground that "Sokoloff was inherently unbelievable" and the jurors "had no use for him." Plaintiff did not oppose this item of costs;[13] the objection therefore has been waived.

Disposition

The judgment is affirmed.

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ELIA, Acting P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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McADAMS, J.

[13] With respect to Dr. Sokoloff, plaintiff contested only the amount claimed for the witness's second deposition. The court agreed and struck this item, which totaled $171.20.